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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38922

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

RICKY B. DEVARA,

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY
James Waylon Counts, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellant

Bennett J. Baur, Chief Public Defender
Carrie Cochran, Assistant Appellate Defender
Santa Fe, NM

for Appellee

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} The State appeals from a district court order granting Defendant’s motion for judgment notwithstanding the jury’s guilty verdict and dismissing a driving while intoxicated charge. [RP 256, 263] We issued a calendar notice proposing to reverse. Defendant has responded with a memorandum in opposition. We reverse.

{2} “A district court does not have the authority to override a jury’s verdict and enter a verdict different than that handed down by the jury.” *State v. Torrez*, 2013-NMSC-034, ¶ 10, 305 P.3d 944; see Rule 5-701(A) NMRA (“If the defendant is found guilty, a

judgment of guilty shall be rendered. If the defendant has been acquitted, a judgment of not guilty shall be rendered.”).

{3} We are bound by *Torrez*. See *State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 20, 135 N.M. 375, 89 P.3d 47 (stating that the Court of Appeals is bound by Supreme Court precedent). We are also bound by Rule 5-701(A). See *State v. Cordova*, 1999-NMCA-144, ¶ 30, 128 N.M. 390, 993 P.2d 104 (“It is well-established that this Court is without authority to reverse or revise court rules that have been previously interpreted by our Supreme Court.”). Finally, we also note that this Court has more recently again recognized that a district court has no authority to direct a verdict based on lack of sufficient evidence after a guilty verdict has been rendered. See *State v. Willyard*, 2019-NMCA-058, ¶¶ 14-20, 450 P.3d 445 (reversing the district court’s previous order that set aside a guilty verdict and instructing the district court to enter judgment in accordance with the jury’s verdict.). Like this Court, district courts too are bound by applicable appellate precedent and rules of criminal procedure.

{4} Defendant requests that we address the sufficiency of the evidence on the merits. [MIO 9] We decline to do so at this point. A Defendant’s remedy under these circumstances is to challenge the sufficiency of the evidence on direct appeal from that verdict. *Id.* ¶ 20; see N.M. Const. art. VI, § 2 (“[A]n aggrieved party shall have an absolute right to one appeal.”); *State v. Dorais*, 2016-NMCA-049, ¶¶ 7-11, 370 P.3d 771 (holding that even with inaction, criminal defendants maintain the absolute right to appeal the judgment and sentence, in the absence of a valid waiver).

{5} For the reasons stated above, we reverse.

{6} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

ZACHARY A. IVES, Judge